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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,002	12/14/2001	Frank Venegas JR.	IDS-14902/14	2404

7590 07/02/2003

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,002

Applicant(s)

VENEGAS, FRANK

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 19 May 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This Office action is in response to the amendment filed May 19, 2003 (Paper No. 5).

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on May 19, 2003 (Paper No. 5) have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the **first** paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

As previously indicated, claims 1, 13, 32, and 33 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case, the specification does not state how the sheathing is "removable and replaceable". It is noted that only Figure 2B shows the sheathing, i.e., element 168. It is further noted that page 6, line 19 of the specification recites that the sheathing "may be slid flush against the end of the fitting", i.e., the fact that the sheathing may be "slid" does not infer that the sheathing is "removable" or "replaceable". *Furtherstill*, it is

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noted that the specification, i.e., the "Description of the Invention", does not describe in any way nor does it even mention that the sheathing is "removable" or "replaceable."

The following is a quotation of the **second** paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-10, 19-23, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As previously indicated, claims 6 and 19 recite the limitations "**each** of the polymerized sheathings" (emphasis added) in line 2 and "the outer diameter of the metal tube" in lines 2-3. There is insufficient antecedent basis for these limitations in the claims.

As previously indicated, claims 7 and 20 recite the limitation "the outer diameter of the polymerized sheathing" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is noted that neither the members or sheathing have been properly set forth as having a diameter. *Further*, it is unclear what structure constitutes the "radiused end" and how this end "matches" the outer diameter of the sheathing.

As previously indicated, the use of the limitation "somewhat shorter" in claim 30 is awkward thereby rendering the claim indefinite since what is meant by "somewhat".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As previously indicated, claims 1, 2, and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 in view of Brandenburg '334.

Richter *et al.* '802 disclose a modular system which can be utilized to form a room divider (see column 1, line 27) whereby the system comprises a plurality of vertical members (2) having lower ends (connected on 6) configured to rest on a floor and a plurality of horizontal members (2) extending between the vertical members such that the vertical and horizontal members form a skeletal framework; each of the members being defined by hollow, plastic tubes; structural connection fittings (at 5) removably interconnecting the horizontal and vertical members; a plurality of sheathings (at 7), i.e., made of Velcro, surrounding a portion, i.e., the sheathing is shorter than the tube (2), of each of the horizontal and vertical members; the sheathings having an interior diameter equal to the outer diameter of the tube it covers; the vertical and horizontal members defining a plurality of vertical framed areas and a fabric infill panel (4) is supported in each area; the vertical members defining a first, second, and third corner member so that a back wall (middle of Figure 1A), a first side wall partition (on left side of Figure 1A) and a second side wall partition (on right side of Figure 1A) are formed. *With respect to claims 7-10, insomuch as the claims are best understood (in view of the Section 112 rejections advanced above)*, Richter *et al.* '802 is considered to disclose a slip-in fitting (5) having a base (at 39), an engagement member (at 13) extending therefrom which is configured to engage the inner diameter of the tubes (2), a connector (at 25) which connects (at 30) the fitting (5) to the tube (2), and the engagement member (13) comprising a pair of engagement fingers (21 and 23).

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The claims differ from Richter *et al.* '802 in requiring: (a) the sheathing to be polymeric (claim 1); (b) a horizontal support surface supported by the members (claim 1); and (c) the members to be defined by hollow, metal tubes (claim 5).

With respect to (a), although Richter *et al.* '802 disclose the sheathing being made from Velcro TM, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the sheathing from a polymeric material for ease in economy and manufacture.

With respect to (b), Brandenburg '334 teaches a horizontal support surface (33) supported (at 27) by a vertical member in a system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with a horizontal support surface for increased ease in use to the consumer.

With respect to (c), while Richter *et al.* '802 disclose the members being comprised of hollow, plastic tubes, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the tubes from metal for increased stability of the system.

As previously indicated, claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 in view of Brandenburg '334 as applied to claims 1, 2, and 5-10 above, and further in view of Williams '544.

The claim differs from the above references in requiring the vertical members to each have a caster.

Williams '544 teaches that it is old in the art to utilize casters in a modular system.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with casters for ease in maneuverability of the system and ease to the consumer.

As previously indicated, claims 13, 14, 18-23, 26, 30, 31, 32, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802, alone.

Richter *et al.* '802 disclose the system as advanced above.

The claims differ from Richter *et al.* '802 in requiring: (a) the sheathing to be polymeric (claims 13, 26, 32, and 33); (b) the members to be defined by hollow, metal tubes (claims 18, 31); and (c) a side wall extending from the first partition and a front wall extending from the side wall (claim 34).

With respect to (a), although Richter *et al.* '802 disclose the sheathing being made from VelcroTM, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the sheathing from a polymeric material for ease in economy and manufacture.

With respect to (b), while Richter *et al.* '802 disclose the members being comprised of hollow, plastic tubes, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the tubes from metal for increased stability of the system.

With respect to (c), although Richter *et al.* '802 do not show a side wall extending from the first partition and a front wall extending from the side wall, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with a fourth frame (3) connected to the first partition and a fifth frame (3)

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connected to the fourth frame to thereby define a side wall and a front wall, as called for in the claims, to thereby create a larger partition which allows for ease to the consumer.

As previously indicated, claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 as applied to claims 13, 14, 18-23, 26, 30, 31, 32, and 33 above, and further in view of Goddard '834.

Richter *et al.* '802 disclose the system as advanced above where the infill panels are fabricated from fabric.

The claim differs from Richter *et al.* '802 in requiring the infill panels to be mesh.

Goddard '834 teaches that it is old in the art to utilize mesh panels (see column 1, line 67) in a partition assembly.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with mesh panels, as taught by Goddard '834 for ease in economy and manufacture.

As previously indicated, claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 as applied to claims 13, 14, 18-23, 26, 30, 31, 32, and 33 above, and further in view of Edwards '760.

Richter *et al.* '802 disclose the system as advanced above where the infill panels are fabricated from fabric.

The claim differs from Richter *et al.* '802 in requiring the infill panels to comprise sound absorption panels.

Edwards '760 teaches a modular partition comprising sound absorption panels (see column 5, lines 38-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with sound absorption panels, as taught by Edwards '760 for ease in use to the consumer.

Claims 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 as applied to claims 13, 14, 18-23, 26, 30, 31, 32, and 33 above, and further in view of Brandenburg '334.

Richter *et al.* '802 disclose the system as advanced.

The claims differ from Richter *et al.* '802 in requiring a horizontal support surface supported by the members.

Brandenburg '334 teaches a horizontal support surface (33) supported (at 27) by a vertical member in a system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with a horizontal support surface for increased ease in use to the consumer.

As previously indicated, claims 26, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiner *et al.* '658, alone.

Schreiner *et al.* '658 disclose a modular system (see attached red-marked photocopy of Figure 7) which can be utilized to form a room divider whereby the system comprises horizontal work surface supported by some of the members, a plurality of vertical members (e.g., 34 - see Figure 5) having lower ends configured to rest on a floor and a plurality of horizontal members (unnumbered - see Figure 7, horizontal member below and parallel to 94) extending between the vertical members such that the vertical and horizontal members form a skeletal framework;

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structural connection fittings (at 86 and 70 in Figure 7) removably interconnecting the horizontal and vertical members; a plurality of sheathings (unnumbered - see Figure 5, 44 is sheathing surrounding vertical member 34 and in Figure 7, sheathing is 42 on both sides and 94 which surrounds horizontal member) surrounding some of the horizontal and vertical members and being coextensive with the members; the vertical and horizontal members defining a plurality of vertical framed areas and an infill panel (e.g., 22, 150, etc.) is supported in each area.

The claims differ from Schreiner *et al.* '658 in requiring the sheathing to be polymeric.

Although Schreiner *et al.* '658 is silent as to the material from which the sheathing is made, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the sheathing from a polymeric material for ease in economy and manufacture.

As previously indicated, claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiner *et al.* '658 as applied to claims 26, 27, and 29 above, and further in view of Ball *et al.* '769.

Schreiner *et al.* '658 disclose the system as advanced above.

The claims differ from Schreiner *et al.* '658 in requiring a cabinet suspended from the members.

Ball *et al.* '769 teach a divider system comprising a cabinet (unnumbered - see right side of Figure 1 above element 31) suspended from the members.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Schreiner *et al.* '658 with a cabinet for increased storage capabilities and capacity.

Comments

Although claims 3, 11, 12, 24, and 25 have not been rejected under prior art, these claims are considered to be allowable at this time, in view of the Section 112, 1st paragraph rejection, as advanced above.

Response to Arguments

Applicant's arguments filed May 19, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments (see the second full paragraph on page 12) concerning the Section 112, 1st paragraph rejection, the examiner respectfully disagrees that the specification states that since the diameter of the sheathing is greater than the outer diameter of the tube, that this "would allow for it to slide onto the tube". *Firstly*, the specification states that the sheathing "may be slid flush against the end of the fitting" (see page 6, line 19 of the specification). The specification makes no reference to the fact the sheathing is slid "onto the tube" let alone that the sheathing is then "removable" and then "replaceable". In fact, the specification, i.e., "Description of the Invention" does not utilize the words (or their equivalents) "removable" or "replaceable" in any way. *Finally*, it is noted that the fact that the specification states that the sheathing is slidable "on", i.e., not "onto", the tube does not infer that the sheathing is "removable" or "replaceable".

Applicant's arguments (see top of page 13) concerning the Schreiner *et al.* '658 reference with respect to claims 1-3, 6, 13, and 17 have been considered and are found to be persuasive. With respect to claims 26-29, see attached red-marked photocopy of Figure 7.

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In response to applicant's argument (see the first full paragraph on page 14 and the first full paragraph on page 15) that "Richter *et al.* has nothing to do with office furniture", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). *Further*, in response to applicant's argument (see the last portion of the first full paragraph on page 14) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Richter *et al.* reference is considered to be capable of supporting a support, as shown in Brandenburg, and in the way called for in the claims.

Regarding the Williams reference (see the second full paragraph on page 14), the applicant's arguments are noted.

Applicant's arguments (see the paragraph bridging pages 14 and 15 and pages 15 and 16) concerning the Noble reference have been considered and are found to be persuasive.

With respect to applicant's arguments (see the second full paragraph on page 15) that "the use of a mesh panel (in Richter *et al.*) could be problematic if not hazardous", it is noted that a

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mesh panel provided in Richter *et al.* could allow for airflow and viewing therethrough which are considered by the examiner to not be "hazardous".

Regarding applicant's arguments (see the third paragraph on page 15) concerning the Edwards reference, it is noted that the Richter *et al.* reference is considered to show the "infill panels" and Edwards is utilized to show the material from which the panels could be fabricated.

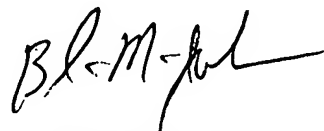
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Jennifer E. Novosad/jen
June 30, 2003



Blair M. Johnson
Primary Examiner

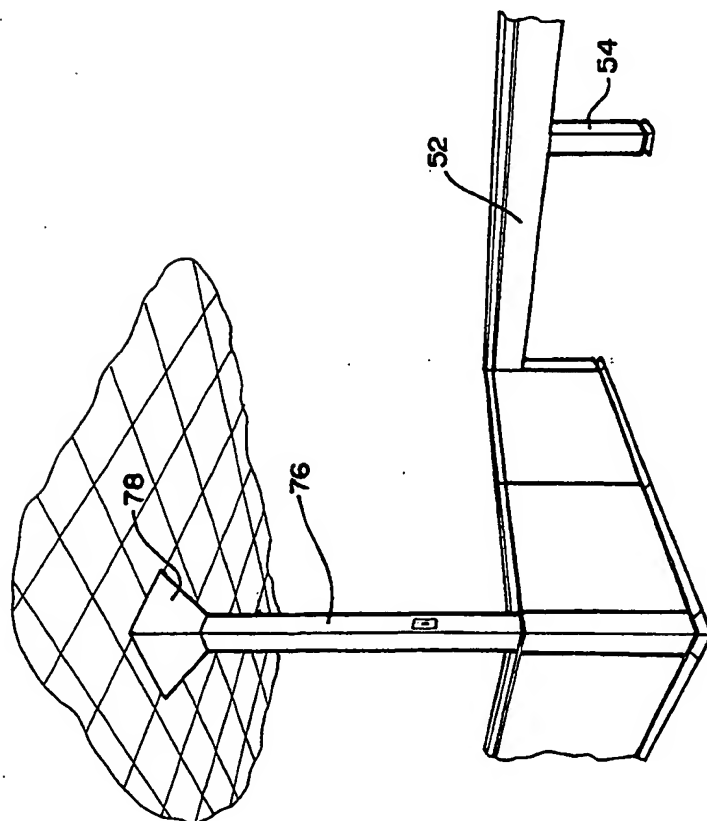
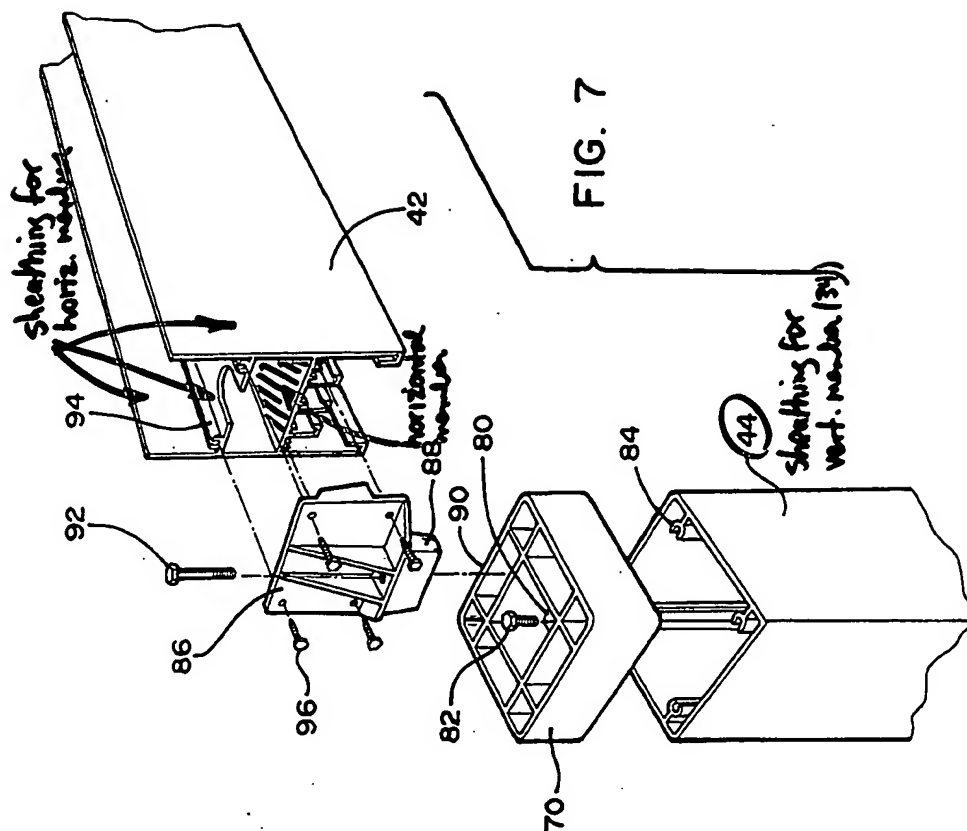


FIG. 6